



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 15, 2010

Ms. Ann M. Montgomery
Assistant County and District Attorney
Ellis County
109 S. Jackson
Waxahachie, Texas 75165

OR2010-14024

Dear Ms. Montgomery:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 393482.

The Ellis County Sheriff's Office (the "sheriff") received a request for a specified offense report. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A). You state the submitted report did not result in a prosecution. Based on your representation and our review, we conclude that section 552.108(a)(2) is applicable to the submitted report.

However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). We note basic information described in *Houston Chronicle* does not include information subject to section 552.130 of the Government Code. Thus, with the exception of basic information, the sheriff may withhold the submitted report under section 552.108(a)(2) of the Government Code.¹

We understand you to assert portions of the basic information are protected by common-law privacy. Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. See *id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. See *id.* at 683. Upon review, we find the portions of the basic information you have marked are highly intimate or embarrassing and not of legitimate public interest. Accordingly, in releasing basic information, the sheriff must withhold the information you have marked under section 552.101 in conjunction with common-law privacy.

In summary, with the exception of basic information, the sheriff may withhold the submitted report under section 552.108(a)(2) of the Government Code. In releasing basic information, the sheriff must withhold the information you have marked under section 552.101 in conjunction with common-law privacy.

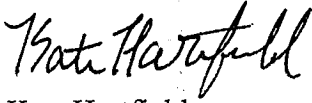
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free,

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kate Hartfield".

Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 393482

Enc. Submitted documents

c: Requestor
(w/o enclosures)